

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF PENNSYLVANIA

THE PNC FINANCIAL SERVICES GROUP,)
INC. and PNC BANK, N.A., Individually and as)
Successor in Interest to NATIONAL CITY)
BANK,) CIVIL DIVISION
Plaintiffs,)) No. 2:13-cv-00331-CB-MPK
v.))
HOUSTON CASUALTY COMPANY and)
AXIS INSURANCE COMPANY,)
Defendants.)

)

JOINT STIPULATION OF DAMAGES

Plaintiffs The PNC Financial Services Group, Inc. and PNC Bank, N.A., Individually and as Successor in Interest to National City Bank (“PNC”) and Defendants Houston Casualty Company (“HCC”) and AXIS Insurance Company (“AXIS”) (collectively, the “Parties”) submit this Joint Stipulation of Damages pursuant to the Court’s scheduling Order of December 9, 2014 (Doc. #72).

In the Court’s Orders of June 24, 2014 (Doc. #63) and July 28, 2014 (Doc. #68) (the “Orders”), the Court ruled, *inter alia*, that certain amounts sought by PNC under the insurance policies at issue (the “Policies”) should be paid as “Loss” under the Policies. The Court ruled, however, that it required more information from the Parties based on the existing record, “because the parties have not provided an adequate detailing of all **Claims Expenses** or **Damages** paid by PNC” and, thus, an issue of fact remained unresolved. Subsequently, the Parties agreed to provide the Court with “a joint stipulation regarding the agreed-upon amount of

PNC's covered 'Loss' pursuant to the Court's June 24 and July 28, 2014 orders or, if necessary, a joint proposal for an expedited procedure for the Court to resolve any remaining issues."

Scheduling Order (Doc. 72) at 2.

Pursuant to the Court's Orders and its directive to the Parties, the Parties have reached a compromise agreement and jointly stipulate that, as of January 21, 2015, the date of PNC's most recent submission of invoices to HCC and AXIS, that PNC's incurred "Loss," as referenced in the Orders, is as follows:

1. PNC has paid a total of \$29,235,643.00 in the MDL in class plaintiffs' attorneys' fees and costs, plaintiffs' incentive awards, settlement administration costs, and notice administration costs. This total includes the amounts listed in the Court's June 24, 2014 Memorandum Order, as well as an additional \$2,022,341.42 in settlement and notice administration costs paid in connection with the MDL.

2. PNC has paid a total of \$5,863,125.78 in *Trombley* in class plaintiffs' attorneys' fees and costs, plaintiffs' services awards, settlement administration costs, and notice administration costs. This total includes the following amounts listed in the Court's June 24, 2014 Memorandum Order, as well as an additional \$2,770,268.73 in claims administration and notice administration costs.

3. PNC has paid \$2,853,459.60 in defense costs and expenses, including attorneys', experts', and other service providers' fees and costs, in the *Trombley* and MDL actions.

4. Thus, PNC's total paid "Loss" pursuant to the Court's Orders, through January 21, 2015, is \$37,952,228.38.

This stipulation is based upon and is in response to the Orders, as well as the Court's Scheduling Order of December 9, 2014 (Doc. #72), and is without waiver of any Party's

appellate rights to challenge the Court's rulings or any right the Parties may have with respect any dispute that may arise as to how the Orders should be interpreted.

All Parties request leave to submit on or before February 17, 2015 a proposed form of Final Judgment and Order of Dismissal, in accordance with the Court's Orders on the Parties' cross-motions for judgment on the pleadings. The proposed form of Final Judgment and Order of Dismissal would account for recent developments, which may reduce the aggregate limits of liability available to satisfy a judgment under one of the insurance policies at issue. The Parties anticipate that the proposed Final Judgment and Order of Dismissal will also contain a compromise agreement as to pre-judgment interest. At the Court's direction, Counsel would be pleased to provide the Court with any additional detail it requires.

Respectfully submitted,

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February 6, 2015

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing JOINT STIPULATION OF DAMAGES has been served via ECF on all counsel of record.

Dated: February 6, 2015

/s/ Courtney C.T. Horrigan